

DAVID DOYLE, OSB #901477
Deschutes County Legal Counsel
david.doyle@deschutes.org
1300 NW Wall Street, Suite 205
Bend, OR 97703
(541) 388-6623
Of Attorneys for Deschutes County

KATHLEEN J. RASTETTER, OSB #931145
Sr. Assistant County Counsel
kathleenras@clackamas.us
2051 Kaen Road
Oregon City, OR 97045
503-655-8362
Of Attorneys for Clackamas County

CHRISTIAN BOENISCH, OSB #972170
County Counsel
boenischc@co.yamhill.or.us
535 NE 5th Street
McMinnville, OR 97128
503-434-7502
Of Attorneys for Yamhill County

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON PORTLAND
DIVISION

DISABILITY RIGHTS OREGON,
METROPOLITAN PUBLIC DEFENDER
SERVICES, INC., and A.J. MADISON,

Plaintiffs,

v.

JAMES SCHROEDER, in his official
capacity as head of the Oregon health
Authority, and DOLORES MATTEUCCI,
in her official capacity as Superintendent
of the Oregon State Hospital,

Defendants,

3:02-cv-00339-MO (Lead Case)
3:21-cv-01637-MO (Member Case)
6:22-cv-01460-MO (Member Case)

**MOTION FOR LEAVE TO
PARTICIPATE AS *AMICI CURIAE*
AND MEMORANDUM IN
SUPPORT THEREOF**

and

LEGACY EMANUEL HOSPITAL &
HEALTH CENTER d/b/a UNITY
CENTER FOR BEHAVIORAL HEALTH;
LEGACY HEALTH SYSTEM;
PEACEHEALTH, and PROVIDENCE
HEALTH & SERVICES OREGON,

Intervenors.

JARROD BOWMAN, JOSHAWN
DOUGLAS-SIMPSON

No. 3:21-cv-01637-MO (Member Case)

Plaintiffs,

v.

DOLORES MATTEUCI, Superintendent of
the Oregon State Hospital, in her individual
and official capacity, PATRICK ALLEN,
Director of the Oregon Health Authority, in his
individual and official capacity,

Defendants,

and

LEGACY EMANUEL HOSPITAL &
HEALTH CENTER d/b/a UNITY
CENTER FOR BEHAVIORAL HEALTH;
LEGACY HEALTH SYSTEM;
PEACEHEALTH, and PROVIDENCE
HEALTH & SERVICES OREGON,

Intervenors.

LEGACY EMANUEL HOSPITAL &
HEALTH CENTER d/b/a UNITY
CENTER FOR BEHAVIORAL HEALTH;
LEGACY HEALTH SYSTEM;
PEACEHEALTH, and PROVIDENCE
HEALTH & SERVICES OREGON,

No. 6:22-cv-01460-MO (Member Case)

Plaintiffs,

v.

JAMES SCHROEDER, in his official capacity as Director of Oregon Health Authority,

Defendants.

CERTIFICATE OF COMPLIANCE

Undersigned counsel of record certifies pursuant to Local Rule 7.1 that they have conferred with defendants' and plaintiffs' counsel. Defendants' and Intervenors' counsel do not object to amicus participation by counties. Counsel for Plaintiff Disability Rights Oregon, Plaintiff Metropolitan Public Defenders Incorporated, and Plaintiffs Jarrod Bowman and Joshawn Douglas-Simpson object to county amicus participation.

MOTION

Deschutes, Clackamas and Yamhill counties, political subdivisions of the State of Oregon respectfully submit this motion for leave to participate in this case as *amici curiae*. Deschutes, Clackamas and Yamhill counties seek to join and incorporate the two amicus briefs previously submitted by Washington and Marion counties.

MEMORANDUM

I. The Interests of the Counties

Deschutes County, Clackamas County and Yamhill County will be affected by any order that this court issues. The issues before this Court affect the counties in a myriad of ways. The impact to each county is unique, substantial and serves as the basis for this court to grant leave for participation as amicus. All three counties operate as the community mental health programs (CMHPs) for their respective counties under ORS Chapter 430. Pursuant to ORS 430.630 a CMHP provides an extensive array of addictions

and mental health services to the community. These services include preventative services for children and adults, inpatient and outpatient services. The services also include crisis stabilization services to people who are in a behavioral health crisis, such as a Mobile Crisis Team, which includes clinicians available to provide free face-to-face services 24 hours a day, seven days a week. In Deschutes County there is also a Mental Health Response Team embedded with the City of Bend PD, made up of a crisis clinician and a law enforcement officer who respond to emergency calls that have a behavioral health component. CMHPs also provides a crisis telephone line. The Crisis Line staff is available to listen to a person's issues, assess the situation, offer support and safety planning, and provide referrals to local resources and treatment. Individuals released based on an arbitrary timeline without reference to mental health conditions will likely rely on county resources for mental health assistance. The CMHPs are also responsible for evaluating and assisting with community restoration of individuals. The counties have an interest in participating as *amici curiae* to present the court with information regarding the effects of the court's orders on these programs. Deschutes, Clackamas and Yamhill counties have interests (not necessarily identical to Washington and Marion counties) relative to transport orders issued to local sheriffs, and extensions of time associated with planning for and placing patients returned to the community for restoration.

In addition, under Oregon state law, counties are required to provide local jails. ORS 169.030. Delays in admission to the state hospital result in longer stays in the county jails. Moreover, if individuals are released from the Oregon State Hospital while still presenting a risk to themselves or others, there is a significant risk that they will be rearrested and reincarcerated in the county jail. As noted, the county sheriff's office is also

affected by the current motion for transportation from the state hospital.

II. Relevant Legal Standards

District courts rely on Federal Rule of Appellate Procedure 29 in addressing such amicus requests. See *California v. United States Dep't of Labor*, No. 2:13-cv-02069-KJM-DAD, 2014 WL 12691095, at *1 (E.D. Cal. Jan. 14, 2014). The Ninth Circuit has held that “[t]he district court has broad discretion to appoint amici curiae,” and the appellate court will reverse “only if the district judge has abused his discretion.” *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *overruled on other grounds*, *Sandin v. Conner*, 515 U.S. 472 (1995). “The touchstone is whether the amicus is ‘helpful.’” *United States Dep't of Labor*, 2014 WL 12691095 at *1 (quoting *Hoptowit*, 682 F.2d at 1260.)

The counties seek the opportunity to provide additional perspectives that were not otherwise represented before the inclusion of Washington and Marion counties as amici curiae. Although the case has been ongoing for almost twenty years, the remedy proposed is contrary to state law and impermissibly shifts Oregon Health Authority’s duty onto Counties and their communities. Deschutes County, Clackamas County and Yamhill County join and rely on the Amicus Brief of Marion and Washington Counties filed on August 25, 2022 (Doc #259-1) and the Amicus Brief Regarding Judicial Authority filed by Marion and Washington Counties on September 30, 2022 (Doc #290). The briefs demonstrate that there are alternatives to the proposed remedy and that the remedy itself would violate Oregon state law. No present party, apart from Washington and Marion counties (and only to the extent of identified common interest), can adequately represent the interest of the counties.

No prejudice to the parties will arise from allowing *amicus* participation. The counties will not participate in discovery; their participation will be limited to filing

memoranda and such participation at any arguments or hearings as may be allowed by the Court.

CONCLUSION

The counties' motion for leave to participate *amicus curiae* should be granted.

DATED: May 25, 2023.

/s/ David Doyle

DAVID DOYLE, OSB #901477
Deschutes County Legal Counsel
david.doyle@deschutes.org

/s/ Christian Boenisch

CHRISTIAN BOENISCH, OSB: 972170
County Counsel
boenischc@co.yamhill.or.us

/s/ Kathleen J. Rastetter

KATHLEEN J. RASTETTER, OSB# 931145
Sr. Assistant County Counsel
dathleenras@clackamas.us

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I caused true and correct copies of the foregoing **MOTION FOR LEAVE TO PARTICIPATE AS *AMICI CURIAE* AND MEMORANDUM IN SUPPORT THEREOF** to be served upon the following listed party(ies) by:

XX NOTICE OF ELECTRONIC FILING USING THE Cm/ECF SYSTEM upon the following parties to the above entitled action on the date set forth below:

U.S. Mail, Second Class, Postage Prepaid on the date set forth below.

Emily R. Cooper Disability Rights Oregon 511 SW 10th Avenue Suite 200 Portland, OR 98104 503-243-2081 Email: ecooper@droregon.org Of Attorneys for Plaintiffs	Jesse A. Merrithew Levi Merrithew Horst LLP 610 SW Alder St. Suite 415 Portland, OR 97205 971-229-1241 Fax: 971-544-7092 Email: jesse@lmhlegal.com Of Attorneys for Plaintiffs
Thomas Stenson Disability Rights Oregon 511 SW 10th Avenue Suite 200 Portland, OR 97205 503-243-2081 Fax: 503-243-1738 Email: tstenson@droregon.org Of Attorneys for Plaintiffs	Carla Scott Oregon Department of Justice 100 SW Market Street Portland, OR 97201 971-673-1880 Fax: 971-673-5000 Email: carla.a.scott@doj.state.or.us Of Attorneys for Defendants
Craig M. Johnson Oregon Department of Justice Assistant Attorney General 1162 Court St. NE Salem, OR 97301 503-947-4700 Fax: 503-947-4792 Email: craig.m.johnson@doj.state.or.us Of Attorneys for Defendants	Sheila H. Potter Oregon Department of Justice Trial Division 100 SW Market Street Portland, OR 97201 971-673-1880 Fax: 971-673-5000 Email: sheila.potter@doj.state.or.us Of Attorneys for Defendants
Thomas A. Carr Washington County Counsel 155 N First Avenue MS 24	Jane E. Vetto Marion County Legal Counsel PO Box 14500 Salem, OR 97309

Suite 340 Hillsboro, OR 97124 503-846-8605 Fax: 503-846-8636 Email: tom_carr@washingtoncountyor.gov Of Attorneys for Washington County	503-588-5220 Fax: 503-373-4367 Email: jvetto@co.marion.or.us Of Attorneys for Marion County
Billy Williams Best Best & Krieger LLP 360 SW Bond Street Suite 400 Bend, OR 97702 541-382-3011 Email: billy.williams@bbklaw.com Of Attorneys for Washington, Clackamas and Marion County District Attorneys	Josh Newton Best Best & Krieger LLP 360 SW Bond St., Ste. 400 Bend, OR 97702 541-382-3011 Fax: 541-388-5410 Email: josh.newton@bbklaw.com Of Attorneys for Washington, Clackamas and Marion County District Attorneys
Keith M. Garza Law Office of Keith M. Garza PO Box 68106 Oak Grove, OR 97268 503-344-4766 Fax: 503-344-4767 Email: keithgarza@comcast.net Of Attorneys for Judge Matthew J. Donohue, Judge Audrey J. Broyles, Judge Jonathan R. Hill, Judge Kathleen Proctor and Judge Nan. G. Waller	Emma P. Pelkey Lewis Brisbois Bisgaard & Smith LLP 888 SW Fifth Avenue Suite 900 Portland, OR 97204-2025 971-712-2800 Fax: 971-712-2801 Email: Emma.Pelkey@lewisbrisbois.com Of Attorneys for Legacy Emanuel Hospital, Providence Health & Services, Legacy Health Systems, PeaceHealth and St. Charles
Eric J. Neiman Lewis Brisbois Bisgaard & Smith LLP 888 SW Fifth Avenue Suite 900 Portland, OR 97204-2025 971-712-2800 Fax: 971-712-2801 Email: eric.neiman@lewisbrisbois.com Of Attorneys for Legacy Emanuel Hospital, Providence Health & Services, Legacy Health Systems, PeaceHealth and St. Charles	Thomas R. Johnson Stoel Rives LLP 760 S.W. Ninth Ave. Suite 3000 Portland, OR 97205 503-220-2480 Email: tom.johnson@stoel.com Of Attorneys for Legacy Emanuel Hospital, Providence Health & Services, Legacy Health Systems, PeaceHealth and St. Charles

DATED: May 25, 2023.

/s/ David Doyle
DAVID DOYLE, OSB #901477
Deschutes County Legal Counsel
david.doyle@deschutes.org